IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

L.P.A No. 2952 of 2001.

Date of decision : February 28, 2007.

Smt Sheela Rani,

.....Appellant

through Mr.R.K.Malik, Advocate

v.

The State of Haryana & others,

.....Respondents

through Mr.B.S.Rana, Addl.A.G.Haryana

CORAM : HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE
HON'BLE MR.JUSTICE RAJIVE BHALLA

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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The appellant has filed this appeal impugning the judgment, dated 28.11.2001, passed by the learned Single Judge, dismissing the writ petition, filed by the appellant.

In the year 1978, the appellant started her career as a Supervisor in the Social Welfare Department of the State of Haryana on adhoc basis. Her services were regularised w.e.f 15.9.1982 in the same cadre. On 24.2.1987, she was appointed as Child Development Project Officer (for short herein after referred to as “CDPO”) against a vacant post

for a period of four months in her own payscale. On 25.9.1987, she was given additional charge of CDPO, Rajound, District Jind. Vide order dated 23.10.1987, she was promoted, alongwith 27 others, as CDPO from the post of Supervisor, against a temporary post, and on adhoc basis. On 2.11.1987, M/S Sheoji Ram Suresh Kumar, Ananj Mandi, Jind supplied "Gur" under Nutrition Programme to the appellant's office. Though the said firm allegedly supplied 70 quintals of Gur, as recorded in the bills, a physical weighment of the bags revealed a shortage of 4 quintals. Suresh Kumar, a partner of the firm, gave an undertaking to make good the shortage within two or three days. On 3.11.1987, the appellant informed Smt. Sushila Rawal, Programme Officer, Jind regarding the aforesaid shortage. On 6.11.1987, she wrote a letter, in her official capacity, as CDPO to the firm to make good the shortage of 4 quintals of Gur. Vide order, dated 11.2.1988, the appellant was reverted to the post of Supervisor. The said order was impugned by way of a Writ Petition, which was eventually dismissed by the learned Single Judge, vide the impugned judgment. Hence, the present appeal.

Counsel for the appellant vehemently contends that though the appellant was a probationer on the promotional post, she could only be reverted if her work and conduct were found to be unsatisfactory. Reversion, on the basis of a particular incident or a preliminary report prepared, without affording an opportunity to the delinquent, renders the order of reversion stigmatic and passed as a measure of punishment and, thus, a nullity. It is further argued that the learned Single Judge failed to peruse the sub-stratum of the impugned order of reversion. It was not denied by the respondents in their reply that the appellant had been reverted

on account of shortage of Gur and, therefore, it was concluded that she was remiss in the discharge of her duties. The learned Single Judge should have taken into consideration the aforementioned facts, as also the fact that a detailed inquiry was conducted, wherein disciplinary action was suggested against the appellant, as also her subordinate. However, instead of taking disciplinary action, the appellant was reverted on the premise that being a probationer, her work and conduct were unsatisfactory and she should be reverted to her substantive post. It is further argued that a perusal of the written statement, more particularly paragraph 17 thereof, reveals that departmental action was recommended against the appellant. However, as the appellant was on probation, it was decided to revert her to her substantive post. It is further contended that the respondents have themselves admitted in the written statement that departmental inquiry was recommended against Prem Chand, Assistant working under the appellant, but, as on the same set of facts, no action was taken against Prem Chand. The order of reversion against the appellant would operate as a punishment and, therefore, be set aside. Reliance is placed upon the judgments of the Hon'ble Supreme Court, reported as Ravindra Kumar Misra v. U.P.State Handloom Corpn. Ltd, 1987 Supp SCC 739, Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences, (2002) 1 SCC 520, and V.P.Ahuja vs State of Punjab and others, 2000(2) SLR 1.

Counsel for the respondents, on the other hand, contends that the impugned order, reverting the appellant, to her substantive post, was passed, in accordance with the provisions of rule 10.1 of the Haryana Social Welfare Department and Relief Organisation Group B Service Rules, 1987. A fact finding inquiry was conducted with respect to the shortage of 4

quintals of Gur. The inquiry revealed that the appellant was responsible but instead of initiating a departmental inquiry, it was decided that as she was on probation for a period of one year, she should be reverted. It is contended that the order of reversion is not stigmatic and does not, in any manner, cast any aspersion upon the appellant's abilities. It is contended that as the order, reverting the appellant, is an order of reversion simpliciter, passed during probation period, the learned Single Judge rightly held that the order of reversion was not punitive and, therefore, dismissed the writ petition.

We have heard learned counsel for the parties and perused the paper book.

In so far as, the action, taken against Prem Chand, the appellant's subordinate, counsel for the respondents submits, on instructions, that no action was eventually taken against Prem Chand, who was reinstated and departmental proceedings, against him, were dropped.

The law as regards the rights of a probationer to impugn his or her reversion is well settled. If the delinquency of the officer is the "motive" for termination, then such an order cannot be held to be punitive. However, if the "foundation" of the order is the alleged delinquency, the said order would necessarily be punitive. In support of the aforementioned, reference may be made to the judgments of the Hon'ble Supreme Court, reported as Ravindra Kumar Misra v. U.P.State Handloom Corpn. Ltd, 1987 Supp SCC 739, and Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences, (2002) 1 SCC 520. In Pavanendra Narayan Verma's case (supra), it was held that where prior to termination of the services of a probationer, a full scale inquiry was held into the allegations, levelling

moral turpitude or misconduct, and the said inquiry culminated into a finding of guilt, then irrespective of the nature of the order, the order would have to be held to be punitive. In the present case, the impugned order of reversion appears to be innocuous, as it does not refer to misconduct on the part of the appellant. However, the record, which has been produced before us, is to the contrary. A detailed inquiry was held, wherein statements of the appellant, as also other officials, were recorded. The Inquiry Officer submitted a report indicting the appellant for a shortfall of 4 quintals of Gur. The Inquiry Officer recorded the statements of the appellant, and of Prem Chand, Accountant, Renu Bala, Supervisor, Sunita Upadhaya, Supervisor, Sushila Rawal, PO Jind, Saroj Kumari Jain CDPO Narwana, Amar Nath Storekeeper o/o CDPO Narwana. On the basis of the aforementioned statements, the Inquiry Officer returned a categoric finding that the CDPO Kalayat (the appellant) and the Accountant Kalayat (Prem Chand) were definitely at fault. It was further recorded that the appellant behaved in an irresponsible manner in not carrying out a test check of the weight of commodities before they were supplied to the Anganwaris. She failed to ask the supplier for a revised bill, after detection of shortage. Her subsequent attempts to make good the shortage were half hearted. It was, therefore, recommended that the appellant and Prem Chand-Accountant should be suspended. A further perusal of the record discloses a office note, dated 28.12.1987, which reads as follows :-

> "Seen. I feel that CDPO Kalayat, who is under probation, should be demoted. Pl examine, if it is legally correct course of action."

The office notings thereafter proceed in accordance with the

above reproduced note. At this stage, it would also be necessary to mention here, and as admitted by counsel for the respondents, that the other delinquent official, namely, Prem Chand, Accountant was reinstated and departmental proceedings, against him, were dropped, apparently as no case was established. In the reply, filed by the respondents to the writ petition, it was specifically averred as follows :-

> "The order of reversion of the petitioner has been passed by respondent no.1 strictly in accordance with the provision of Rule 10 of Haryana Social Welfare Department and Relief Organisation Group `B' Service Rules. The whole matter of short supply of 4 quaintals of Gur happened during the period the petitioner was head of office for which she was fully responsible. The staff under her was also responsible in this matter for wrong maintenance of official record. Liable action against them is under consideration of the department. In such a situation when petitioner was on probation as provided in Haryana Social Welfare Department and Relief Organization Group `B' Service Rules, it was not considered advisable to proceed against the petitioner by way of departmental enquiry, the proceeding in the said allegations against the petitioner were dropped and it was decided to revert her during period of her probation. The order of reversion is neither by way of punishment nor is it founded on the fact finding enquiry relating to Gur as alleged."

A conjoint appraisal of the record, as also the above reproduced extract of the reply to the writ petition, leaves no manner of doubt that the order of reversion, though silent as regards any misconduct or any opinion as to the appellant's work and conduct, was passed, pursuant to a detailed inquiry, which indicted the appellant for misconduct. Though the findings of the Inquiry Officer do not find mention in the order of reversion, the said findings were accepted by the respondents. Thereafter an office note was recorded that instead of departmental proceedings, the appellant be reverted. These facts, in our considered opinion, clearly indicate that the foundation of the order of reversion was the alleged delinquency of the appellant. Punishment for an alleged act of misconduct was the foundation of the order of reversion and, therefore, in our considered opinion, could not have been passed, without affording an opportunity to the appellant to show cause against her alleged delinquency. There is no material on record, and none has been placed, before us, to suggest that other than the act alleged, her work and conduct was ever appraised and found unsatisfactory. The basis for the impugned order of reversion was the solitary incident of shortage of 4 quintals of Gur and, therefore, the impugned order, being founded upon a finding of guilt, was erroneously held by the learned Single Judge to be in accordance with the terms and conditions of the appellant's promotion.

Another aspect of the matter that merits notice is that the appellant's subordinate, who was suspended and proceeded against departmentally, was reinstated and no departmental action was eventually taken against him. We are satisfied that the holding of a full scale inquiry into the alleged misconduct, which culminated into a finding of guilt, was

the foundation for the order of reversion and, thus, the order reverting the appellant was punitive. The learned Single Judge, therefore, erred in holding that the order of reversion did not suffer from any illegality. Though the learned Single Judge noticed that the appellant was held guilty for causing loss to the government and it was for this lapse that the government formulated an opinion that the appellant should be reverted to her substantive post, the learned Single Judge committed an error in failing to peruse the record from where it is apparent that the order of punishment was passed as a measure of punishment and not merely on account of unsatisfactory work and conduct. Consequently, the present appeal is allowed, the judgment of the learned Single Judge, dated 28.11.2001 is set aside, and the order, reverting the appellant, dated 15.2.1988, is quashed. The respondents would, however, be free to proceed against the appellant, in accordance with law.

(VIJENDER JAIN)
CHIEF JUSTICE

(RAJIVE BHALLA)
JUDGE

February 28, 2007.
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